

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Rahul R. Vaid
Serial No. : 09/409,242
Filed : September 30, 1999
Title : PRE-PAID AIRLINE TICKETS

Art Unit : 3626
Examiner : Robert W. Morgan
Conf. No. : 5090

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Sir:

This Appeal Brief is submitted pursuant to the Notice of Appeal filed in the U.S. Patent and Trademark Office on October 5, 2006, and in support of the appeal from the Final Rejection set forth in the Office Action mailed on July 10, 2006. The fee for filing a brief in support of an appeal is enclosed herewith, along with a fee for a two-month extension of time.

I. REAL PARTY IN INTEREST

The real party in interest is TechVenture Associates, Inc., 1814 Weanne Drive, Richardson, TX 75082.

II. RELATED APPEALS AND INTERFERENCES

Appellant, the undersigned Attorney, and Assignee are not aware of any related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-16 and 76-78 remain pending in the Application. Claims 1-16 and 76-78 are being appealed by way of this Appeal Brief. A copy of the claims appears in the Claims Appendix, Section IX, of this Appeal Brief.

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With regard to the prosecution history of the claims of the present application, claim 34 was amended in an Amendment filed on September 23, 2002. Claims 1, 34, and 44 were amended and claims 50-56 were added in an Amendment filed on February 3, 2003. Claims 17-33 were withdrawn and claims 57-74 were added in an Amendment filed on November 3, 2003. Claims 1, 34, 44, and 66 were amended and claims 65-74 were renumbered as claims 66-75 in an Amendment filed July 19, 2004. Claim 1 was amended and claims 34-75 were canceled in an Amendment filed March 1, 2005. Claims 1, 3, 6, and 8-16 were amended in an Amendment filed September 6, 2005, but the Amendment was not entered for being non-compliant. The Amendment filed September 6, 2005 was re-filed on October 10, 2005, and the amendments to claims 1, 3, 6, and 8-16 were entered. Claim 1 was amended and claims 76-78 were added in an Amendment filed April 3, 2006.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the Final Rejection dated July 10, 2006. Applicant did not conduct an Examiner's Interview following the Final Rejection. Applicant submitted a Pre-Appeal Brief Request for Review on October 5, 2006, and, responsive thereto, a Pre-Appeal Brief conference was conducted. The panel respectfully disagreed with Applicant's Request for a Notice of Allowance in a Notice of Panel Decision from Pre-Appeal Brief Review mailed on November 3, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Claim 1

1. A pre-paid airline ticketing system comprising:
a processor; and
a storage device in communication with said processor and configured to store a record representing a pre-paid, fixed-price option purchased by a customer, the record including:
 - (i) a plurality of geographic flight parameters and a plurality of non-geographic flight parameters, at least one of the geographic flight parameters being unspecified and at least one of the non-geographic flight parameters being participating airlines available for selection by the customer for booking a flight; and

- (ii) an identifier associated with and uniquely identifying the record for the customer to use to exercise the pre-paid, fixed price option; and
- said processor configured to:
- verify an identifier submitted by a customer to exercise the pre-paid, fixed-price option;
 - retrieve the record including the identifier submitted by the customer;
 - directly communicate and present information to the customer, the information representative of flights available to be selected by the customer based on the geographic and non-geographic flight parameters stored in the record;
 - directly receive selection information of one of the flights from the customer; and
 - book the flight selected by the customer from among the presented flights by exercising the pre-paid, fixed-price option. (emphasis added)

Briefly, a system according to claim 1 includes a “processor configured to ... present information ... representative of flights available to be selected by the customer ... receive selection information of one of the flights from the customer and book the flight selected by the customer ... exercising the pre-paid, fixed-price option.”

B. Claim 7

7. The pre-paid airline ticketing system of claim 1 further comprising a dependence between two or more of the plurality of geographic flight parameters.

Briefly, a system according to claim 7 adds an element of dependence between two or more geographic flight parameters. As disclosed in the originally filed specification at least at page 11, lines 4-15, a dependence between two or more geographic flight parameters may be used to “limit possible destinations to those within the prescribed distance limit.” (page 11, lines 7-8).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

As a concise statement of the grounds for appeal, Applicant states that Claims 1-16 and 76-78 stand rejected under 35 U.S.C. 103(a) in the present Final Office Action mailed on July

10, 2006, with the Examiner finding the claims to be unpatentable over U.S. Patent No. 5,897,620 to Walker et al. ("Walker") in view of "Hawaiian Air to Offer Tickets Through ATMs" by Wall Street Journal ("Hawaiian Air").

VII. ARGUMENT

Group I: Claims 1-6, 12-16, and 76-78

Group II: Claims 7-11

The claims in Groups I and II respectively stand or fall together.

A. Remarks Regarding the Rejection of Group I

Claims 1-6, 12-16, and 76-78 stand rejected under 35 U.S.C. §103(a) based on Walker in view of Hawaiian Air.

1. **The Combination of Walker and Hawaiian Air Fails as a *Prima Facie* Case of Obviousness Under 35 U.S.C. 103(a) according to MPEP 2143**

Applicant believes an issue exists as to whether a combination of (i) a system that gives control to airlines to book a flight for a customer willing to accept flights to be booked by the airline in exchange for a discounted price as described by Walker and (ii) an 'open ticket' as described by Hawaiian Air establishes a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). MPEP § 2143.

a. **Walker Requires Airlines to Book Flights for Customers**

The Final Office Action dated July 10, 2006, at page 2, part 10, second paragraph, states, "Walker et al. teaches ... the identifier ... to be utilized by the customer to book a flight"

(Walker, col. 3, lines 1-11). However, Applicant respectfully points out that Walker specifically recites in col. 3, lines 1-11,

a system and method for ... transmitting the special fare listing to a buyer; receiving a booking of a ticket corresponding to the special fare listing from the buyer; transmitting the booking information to an airline; and receiving an identification of a flight selected by the airline which fulfills the terms of the ticket. (emphasis added)

The above-cited disclosure by Walker is in direct contrast to Applicant's claim 1, last paragraph, which recites, "book the flight selected by the customer from among the presented flights by exercising the pre-paid, fixed-price option." (emphasis added) A restriction consistent with Walker's system prohibiting a customer from selecting his or her flight is described in Applicant's background section of the originally filed Application on page 2, lines 7-13.

In particular, Walker's system requires the customer to have flight-time flexibility (*i.e.*, relinquish some level of control) in exchange for an airfare discount (Abstract). Walker further presents an example whereby a customer affording the airlines with a wider "window of departure" (*e.g.*, 8 AM to 8 PM) associated with a special fare listing will receive a greater discount (col. 5, lines 11-15). The airlines use this flight-time flexibility to place the customers aboard flights to fill seats that would otherwise remain empty (col. 3, lines 24-27; Abstract). As disclosed in Walker at col. 2, line 30 - col. 3, line 23, a traveler specifies geographic flight parameters (*i.e.*, a departure location and a destination location) and a time range for travel. Based on the parameters specified by the traveler, an *airline assigns the traveler to a flight*. Even if a record associated with a special fare listing is used by a customer, the airline, not the customer, uses the record to book a flight. In summary, Walker *requires* that the *airline* book the flight for the customer and does not teach or suggest any other way by which a flight may be booked.

b. Hawaiian Air Does Not Disclose a Record Stored in a Storage Device or a System that Presents Flights Available to a Customer

The Final Office Action dated July 10, 2006 in the paragraph bridging pages 3 and 4, states,

Hawaiian Air plans to allow customer[s] and non-customer[s] of Bank of Hawaii to buy flight coupons through the bank's ATMs 24

hours a day using a card issued by the bank or a major credit card
(see paragraph 4).

Hawaiian Air discloses a bank automated teller machine (ATM) through which it sells an 'open ticket' to a customer or non-customer for a future flight. The customer or non-customer later uses the 'open ticket' by contacting the airline, Hawaiian Air, to book a flight on the airline (paragraph 3). As best understood by Applicant, the Hawaiian Air 'open ticket' is made of paper and may include a record, but that record is not disclosed by Hawaiian Air to be stored on a storage device, as recited in Applicant's claim 1 ("storage device ... configured to store a record representing a pre-paid, fixed-price option purchased by a customer").

Moreover, Hawaiian Air does not disclose a system that presents flights available to a customer based on a record as claimed by Applicant in claim 1 ("processor configured to ... directly communicate and present information ... representative of flights available to be selected by the customer based on the geographic and non-geographic flight parameters stored in the record").

c. The Combination of Walker and Hawaiian Air Fails to Teach or Suggest All of the Claim Elements of Claim 1

The Final Office Action mailed July 10, 2006 states on page 4 at the end of the paragraph bridging pages 3 and 4 that, "[s]ince Hawaiian Air is issuing 'open tickets' which are valid for [a] year the skilled artisan expects an 'open ticket' to include an identifier" The understood reason stated in the Final Office Action for making the assumption of the 'open ticket' having an identifier, which Applicant does not oppose, is to combine Walker with Hawaiian Air because, as stated in the Final Office Action, page 3, first full paragraph, "Walker et al. fails to teach an identifier associated with [and] uniquely identifying the record for the customer to [use] to exercise the pre-paid, fixed price option." Applicant, however, respectfully submits that Hawaiian Air's 'open ticket,' with or without an identifier, does not overcome the shortcomings of Walker's system failing to "book the flight *selected by the customer*" and, therefore, fails teach or suggest all elements of Applicant's claim 1.

Moreover, since Walker's system has airlines select flights for customers, Walker's system does not "present flights available to be selected by customers," as recited in Applicant's

claim 1. Nor does Hawaiian Air “present flights available to be selected by customers,” since bank ATM machines dispense money primarily and Hawaiian Air does not teach or suggest how bank ATM machines can be modified to serve complex functions of air travel systems, also.

Thus, while an ‘open ticket’ of Hawaiian Air may include a record with an identifier, the Walker System does not allow a customer to book a flight, and neither Walker nor Hawaiian Air disclose a system that “presents flights available to be selected by a customer,” as recited in Applicant’s claim 1. So, combining an identifier of a record of an Hawaiian Air ‘open ticket’ would still not allow a customer to book a flight. Therefore, there is no motivation to combine the references, and, thus, there is no *prima facie* case of obviousness.

2. Hawaiian Air’s ‘Open Ticket’ Cannot be Combined with Walker’s System

a. The Proposed Modification Would Render the Prior Art Invention Being Modified Unsatisfactory for its Intended Purpose

Incorporating the Hawaiian Air ‘open ticket’ into the system of Walker renders the system of Walker unworkable as a ticketing mechanism for an airline. If the Hawaiian Air ‘open ticket’ were incorporated into the Walker system, a passenger would not be allowed to book a flight because Walker requires that the *airline* book the flight for the customer, as described above. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). So, if customers were allowed to book a flight via the Walker system, the customers would be given back control that, in Walker’s system, they specifically relinquished to the airlines in exchange for airfare discounts. From the airlines’ point of view, the Walker system would fail to allow them to fill seats that would otherwise remain empty, and, thus, the Walker system would fail for its particular purpose.

Additionally, there is no motivation to combine the assigned ticket of Walker with the ‘open ticket’ of Hawaiian Air since that would render the ‘open ticket’ of Hawaiian Air inoperable. Specifically, once an airline, in cooperation with the Walker system, assigns the customer to a flight, the functionality of the ‘open ticket’ of Hawaiian Air is defeated. If the

proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F. 2d 810, 123 USPQ 349 (CCPA 1959).

b. An Example Scenario Further Illustrates the Proposed Modification Rendering the Prior Art Invention Being Modified Unsatisfactory for its Intended Purpose

Even though the combined system of Walker and Hawaiian Air has been shown to be unworkable by Applicant in the arguments presented above, an example of a purchase of an 'open ticket' disclosed by Hawaiian Air is now presented in view of a hypothetically combined system.

A hypothetical customer purchases an 'open ticket' for booking an inter-island flight on Hawaiian Airlines from a Bank of Hawaii ATM machine. The customer thereafter logs onto the hypothetical Walker and Hawaiian Air combined system for booking a flight only to learn that the Walker system will only submit a flight request to airlines, which may include Hawaiian Air, to book a flight for the customer. Thus, the customer must relinquish control to the airline in the combined Hawaiian Air and Walker hypothetical system. To reiterate, the Walker system removes customer choice by giving control to the airlines making the bookings, which is different from Applicant's pending claim 1 ("record for the *customer* to use to exercise the pre-paid, fixed price option").

Conversely, if the hypothetical customer purchases an assigned ticket of Walker seeking flexibility and control for future travel on Hawaiian Air or any other airline, the hypothetical customer would again be disappointed to learn, possibly at an airport check-in counter, that the assigned ticket offers him, the customer, no flexibility or control. In other words, the ticket issued by the Walker system represents a flight booked by an airline and, thus, is not an 'open ticket' as defined by Hawaiian Air. The limitations presented by the hypothetical system were addressed in background section of Applicant's application as originally filed (page 1, line 11 - page 2, line 16).

In view of the foregoing remarks, because the proposed modification of the Walker system would render the system unsatisfactory for its intended purpose, the combination of

Walker and Hawaiian Air is not a *prima facie* case of obviousness. Accordingly, Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. 103(a) be withdrawn. Group I dependent claims, claims 2-6, 12-16, and 76-78, which depend from independent claim 1, should be allowable for at least the same reasons.

3. Oneda's Ticketless System does not make up for the Shortcomings of Walker

Claims 12-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of U.S. Patent No. 5,953,705 to Oneda.

Oneda is directed to a ticketless system in which airline ticket information may be stored in an integrated circuit (IC) and the traveler may use the IC when checking in for a flight. Oneda, however, fails to address the shortcomings of Walker with respect to claim 1, as described above. Therefore, claims 12 and 13 under 35 U.S.C. 103(a) should be allowable for at least the same reasons as claim 1. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. 103(a) of claims 12 and 13 be withdrawn.

B. Remarks Regarding the Rejection of Group II

Claims 7-11 stand rejected under 35 U.S.C. §103(a) based on Walker in view of Hawaiian Air.

Claim 7, from which claims 8-11 depend, recites, "dependence between two or more of the plurality of geographic flight parameters." As disclosed in the originally filed specification at least at page 3, lines 8-15, "[t]he dependence may comprise[s] a maximum distance between the destination and departure location." Furthermore, on page 11, lines 4-15, a dependence between two or more geographic flight parameters may be used to "limit possible destinations to those within the prescribed distance limit." (page 11, lines 7-8). The dependence between two or more of the geographic flight parameters of the prepaid airline ticketing system, as claimed, is used by Applicant's system during flight selection *by the customer*.

Neither Walker nor Hawaiian Air discloses a "dependence" between two or more geographical flight parameters that are used by the customer to book a flight. Walker does not add a dependence to a customer's choice of geographic flight parameters for booking a flight

since the airlines are making the flight decisions. Hawaiian Air does not include such a dependence of geographic flight parameters because the Hawaiian Islands are all within a single geographical region according to what was disclosed in Hawaiian Air. Accordingly, because there is a lack of motivation to combine Walker and Hawaiian Air, a combination of Walker with Hawaiian Air fails to support a prima facie case of obviousness.

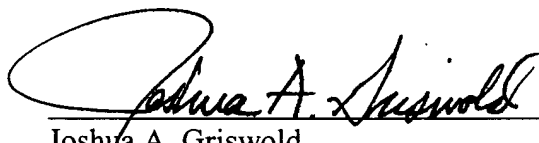
Based on the foregoing, Applicant respectfully submits the claims of Group II are non-obvious over Walker in view of Hawaiian Air and respectfully requests the rejection under 35 U.S.C. 103(a) be withdrawn.

VIII. CONCLUSION

In view of the above, and for other reasons clearly apparent, Applicant respectfully submits that the Application is in condition for allowance, and requests such a Notice.

The brief fee of \$250 is enclosed. Also being filed concurrently herewith is a Petition for Two Month Extension of Time and enclosed is a check in the amount of \$225 for the two-month extension of time. The Commissioner is hereby authorized to charge any deficiencies or other required fees or any credits to deposit account 06-1050, referencing the attorney docket number shown above.

Respectfully submitted,


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Date: February 5, 2007

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IX. APPENDIX OF CLAIMS

1. A pre-paid airline ticketing system comprising:
 - a processor; and
 - a storage device in communication with said processor and configured to store a record representing a pre-paid, fixed-price option purchased by a customer, the record including:
 - (i) a plurality of geographic flight parameters and a plurality of non-geographic flight parameters, at least one of the geographic flight parameters being unspecified and at least one of the non-geographic flight parameters being participating airlines available for selection by the customer for booking a flight; and
 - (ii) an identifier associated with and uniquely identifying the record for the customer to use to exercise the pre-paid, fixed price option; andsaid processor configured to:
 - verify an identifier submitted by a customer to exercise the pre-paid, fixed-price option;
 - retrieve the record including the identifier submitted by the customer;
 - directly communicate and present information to the customer, the information representative of flights available to be selected by the customer based on the geographic and non-geographic flight parameters stored in the record;
 - directly receive selection information of one of the flights from the customer; and
 - book the flight selected by the customer from among the presented flights by exercising the pre-paid, fixed-price option.
2. The pre-paid airline ticketing system of claim 1 wherein the identifier comprises an alpha-numeric sequence.

3. The pre-paid airline ticketing system of claim 1 wherein the plurality of non-geographic flight parameters include at least two of the following: a date, a time, a flight number, and a seat number.
4. The pre-paid airline ticketing system of claim 1 wherein the plurality of non-geographic flight parameters further comprise one or more unspecified non-geographic flight parameters.
5. The pre-paid airline ticketing system of claim 4 wherein the one or more unspecified non-geographic flight parameters comprise a range of possible values from which the one or more unspecified non-geographic flight parameters may be selected.
6. The pre-paid airline ticketing system of claim 1 wherein the plurality of geographic flight parameters comprise a departure location and a destination location.
7. The pre-paid airline ticketing system of claim 1 further comprising a dependence between two or more of the plurality of geographic flight parameters.
8. The pre-paid airline of claim 7 wherein the dependence comprises a maximum distance between the destination location and the departure location.
9. The pre-paid airline ticketing system of claim 7 wherein the dependence comprises a geographical region from which the departure location and the destination location must be selected.
10. The pre-paid airline ticketing system of claim 7 wherein the dependence comprises a geographical region from which the departure location must be selected for a specified destination location.

11. The pre-paid airline ticketing system of claim 7 wherein the dependence comprises a geographical region from which the destination location must be selected for a specified departure location.
12. The pre-paid airline ticketing system of claim 1 further configured to store data on a machine-readable, tangible medium.
13. The pre-paid airline ticketing system of claim 12 wherein the machine-readable, tangible medium stores an encoded representation of the identifier.
14. The pre-paid airline ticketing system of claim 1 wherein said processor is further configured to generate a printed receipt, the printed receipt including a first part for presentation to an airline and a second part for a customer's records, the printed receipt including, in printed form, the identifier, the plurality of non-geographic flight parameters, and the plurality of geographic flight parameters.
15. The pre-paid airline ticketing system of claim 1 wherein said processor is further configured to issue an electronic receipt including the identifier.
16. The pre-paid airline ticketing system of claim 15 wherein the electronic receipt is an email receipt.
76. The prepaid airline ticketing system according to claim 1, wherein said storage device further stores a database in which the record is stored.
77. The prepaid airline ticketing system according to claim 1, wherein the processor retrieves the record by accessing the database.

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78. The prepaid airline ticketing system according to claim 1, wherein the actual flights presented to the customer are presented with schedule flight times.

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X. EVIDENCE APPENDIX

Applicant is not submitting any evidence at this time.

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XI. RELATED PROCEEDINGS APPENDIX

There are no related proceedings to this action.